IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1344 OF 2003

Bindumadhav Narayan Sambus .. Petitioner

Vs.

Umesh Joshi & Ors. .. Respondents

Shri Nitin Jamdar for Petitioner.
Shri S.J. Rairkar for Respondent No. 1 and 2.
Shri A.S. Shitole, APP for State.

CORAM: S.K. SHAH, J.

DATE : 18th April, 2006.

P.C.

Heard counsels from both sides. Perused the impugned order passed by Judicial Magistrate First Class, Pune, and the order passed by the Additional District Judge, Pune, in Revision.

2. The private complaint was filed alleging offence punishable under sections 379, 454, 451, 420 of IPC by the Petitioner against the Respondents. Learned Magistrate directed enquiry by the police. Accordingly the police has submitted enquiry report.

3. Perused complaint and report. Order of dismissal of the complaint was passed by the Judicial Magistrate. In Revision the said order of dismissal was confirmed. The allegation of the petitioner herein is that both the orders do not give any reasons. Further allegation is that both the orders have made observation of merits of the matter almost giving final decision in the matter. Perusal of both the orders substantiate the submission made on behalf of the Petitioner. It is needless to say that at the stage of issuance of the process or the dismissal of the complaint it is required to be

considered the material placed before the Magistrate. It is not expected by the Magistrate to weigh the evidence. The observation by the Magistrate are that there is inconsistent evidence, there are material discrepancies between the testimonies and therefore it is further observed that the evidence of Baban Mankar is found to be bereft of credence and no reliance can be placed on his testimony. This observation clearly shows that the material was considered by the Magistrate as if he was considering the evidence for deciding the matter.

4. Similar mistake is committed by the Additional Sessions Judge. Both the impugned orders passed by the courts need to be set aside as they are exceeding jurisdiction to be exercised at the point of issuing of the process. Both the impugned orders are therefore set aside by allowing the writ petition. The Judicial Magistrate is directed to consider the matter of issuance of process on the basis of the material placed before him and pass necessary orders accordingly. The writ petition is disposed of.

(S. K. SHAH, J)